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AZ CORP COMMISSION
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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE - CHAIRMAN

BOB STUMP

BOB BURNS

TOM FORESE

ANDY TOBIN

IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR A HEARING
TO DETERMINE THE FAIR VALUE OF
THE UTILITY PROPERTY OF THE
COMPANY FOR RATEMAKING
PURPOSES, TO FIX A JUST AND
REASONABLE RATE OF RETURN
THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP
SUCH RETURN.

IN THE MATTER OF FUEL AND
PURCHASED POWER PROCUREMENT
AUDITS FOR ARIZONA PUBLIC
SERVICE COMPANY.

DOCKET NO. E-01345A-16-0036

**ARIZONA PUBLIC SERVICE
COMPANY'S REPLY TO ENERGY
FREEDOM COALITION OF
AMERICA'S RESPONSE TO THE
MOTION TO COMPEL FILED BY
ARIZONA PUBLIC SERVICE**

DOCKET NO. E-01345A-16-0123

1 **I. INTRODUCTION**

2 APS respectfully requests that the Presiding Officer grant APS's Motion to Compel
3 and order EFCA to respond to APS Data Requests 1.1, 1.4(a-b), 1.5, and 1.6. This Reply
4 addresses the arguments concerning these Data Requests in numerical order.¹

5 EFCA's Response demonstrates its continued unwillingness to answer basic
6 discovery about who and what it is. And the discovery in question is important. For
7 several years, SolarCity has actively litigated in Commission proceedings. But SolarCity
8 has never done so directly. SolarCity initially acted through The Alliance for Solar
9 Choice, and more recently has begun doing so through EFCA. By using third-party
10 agents, SolarCity has been able to benefit from its participation in regulatory proceedings,
11 but avoid the responsibility that comes with this voluntarily participation: making yourself
12 subject to discovery so that other parties have the fair opportunity to test the merits of
13 your claims using your documents created in the normal course of your business.

14 A primary example concerns SolarCity's claim (made through EFCA) that
15 modernizing rate design will unduly hurt the rooftop solar industry. Although EFCA
16 asserts this claim, its proof is superficial. And EFCA itself is not a rooftop solar company
17 with documents created in its normal course of business that can substantiate (or refute)
18 EFCA's arguments. It is SolarCity—EFCA's largest member (by multiple orders of
19 magnitude) and only member doing business in Arizona (as far as APS can tell)—that
20 possesses documents and information, created in the normal course of business, that
21 would permit APS and others to test EFCA's claims. EFCA refuses to produce these
22 documents, insisting that it is not SolarCity and does not possess SolarCity's documents.
23 And although the Commission's rules establish a means for parties to issue third-party
24 subpoenas, APS's subpoena to SolarCity has only been met with stonewalling.²

25
26 ¹ APS does not use this Reply to address EFCA's irrelevant arguments raised in EFCA's
27 Response. However, this should not be considered an admission of the argument's validity or
accuracy by APS.

28 ² See Exhibits 1 & 2 to APS's Motion to Compel, filed on December 7, 2016.

1 Basic information about EFCA will permit APS to test whether EFCA should be an
2 intervenor in the case, or whether SolarCity itself is the real (and only true) party in
3 interest. If in fact *EFCA is SolarCity*, then APS believes that SolarCity should be required
4 to join this proceeding and assume, *for the first time*, the responsibility of making itself
5 subject to discovery.

6 APS appreciates the responsive answers that EFCA has provided, and when
7 appropriate, has withdrawn certain Data Requests from its Motion to Compel. *See Data*
8 *Requests 1.2, 1.3, and 1.7 below.* However, EFCA continues to withhold basic
9 information that any litigant should be willing to provide. Moreover, some of EFCA's
10 statements in its Response conflict with other information, and raise concerns about some
11 of EFCA's representations.

12 II. SPECIFIC DATA REQUESTS

13 A. 1.1(A)

- 14
15 i. Original Request: "Describe EFCA's business, including its
16 purpose, its source of funding, and what EFCA does or seeks to
17 accomplish in relation to the interest of its members and
18 managers."

19 EFCA's Response claims that its "Supplemental Response" fully addressed this
20 Data Request by providing: "Without waiving and subject to the forgoing objections,
21 EFCA is funded by its members." Response at 2: 9-10; EFCA's Supplemental Response
22 at 2. This is not an adequate answer. APS is not requesting a financial statement for this
23 proceeding; rather, APS simply needs to know generally how EFCA is funded. For
24 example, if funding is provided by its members, a general explanation of how funding is
25 allocated amongst the members (e.g., split evenly or identify a different ratio) would be a
26 satisfactory answer.

27 B. 1.1(B) and 1.4(A)

- 28 i. 1.1(B) Original Request: "Provide a list of EFCA's members
and members of its Board of Directors or any other governing
board or decision-making body."

1 ii. 1.4(A) Original Request: "Identify the senior level executives
2 of EFCA."

3 EFCA's Response argues that by disclosing its members, all of whom are business
4 entities, EFCA has answered the data request. This is incorrect. Fairly read, the Data
5 Request is asking which person(s) is (or are) in charge. EFCA's answers continue to be
6 unresponsive, and APS is entitled to know the names of the persons who make decisions
7 for EFCA. This information could reveal the extent to which EFCA is entirely run by
8 SolarCity representatives.

9 Similarly, EFCA asserts that it "has no senior level executives and is managed by
10 its members." Response at 5:6. Yet EFCA's assertion to the Commission is at complete
11 odds with filings EFCA has made elsewhere. EFCA's "Application for Registration of
12 Foreign Limited Liability Company," filed on April 21, 2016, identifies John M. Stanton
13 as its Chairman. *See* Exhibit 1 at 3. Who is John Stanton? What is the role of the
14 chairman? And why does EFCA want to hide Mr. Stanton and its other decision makers?
15 Moreover, at the recently conducted deposition of Barbara Lockwood, an individual by
16 the name of Jon Wellinghoff appeared as a representative of EFCA.³ Mr. Wellinghoff is a
17 former Chairman of FERC and is SolarCity's "Chief Policy Officer," reporting directly to
18 SolarCity CEO Lyndon Rive.⁴ If Mr. Wellinghoff is a senior executive at SolarCity, what
19 is his role with EFCA? Why did he appear on behalf of EFCA? If EFCA is a separate
20 entity from SolarCity, did EFCA provide Mr. Wellinghoff any compensation?

21 APS is trying to learn who is in charge of EFCA. Clearly, there is at least one
22 human calling the shots (John M. Stanton), and potentially others (Jon Wellinghoff). APS
23 is entitled to know EFCA's decision-makers, and whether they are in fact simply
24 SolarCity employees and executives.

25 ³ *See* (unofficial) transcript from deposition of Barbara Lockwood, at 7:9-10, attached as Exhibit
26 2.

27 ⁴ *See* "SolarCity Appoints Jon Wellinghoff Chief Policy Officer," available at:
28 <http://www.prnewswire.com/news-releases/solarcity-appoints-jon-wellinghoff-chief-policy-officer-300248141.html>.

1 C. 1.2

2 Based on additional representations provided by EFCA after the motion to compel
3 was filed, APS withdraws Data Request 1.2.

4 D. 1.3

5 Based on additional representations provided by EFCA after the motion to compel
6 was filed, APS withdraws Data Request 1.3.

7 E. 1.4(B)

- 8 i. Original Request: "Identify who or what owns EFCA and in
9 what percentage."

10 APS has a good faith basis to believe that EFCA is essentially a front for SolarCity,
11 one of EFCA's members. Zep Solar, LLC, another of EFCA's members, is a wholly
12 owned subsidiary of SolarCity⁵ (Exhibit 3 at 5) and another member, Silevo, LLC, was
13 acquired by SolarCity in 2014.⁶ Exhibit 4. Who owns and controls EFCA is directly
14 relevant to its bias; to whose interests it is attempting to advance in this proceeding; and
15 whether it is SolarCity, not EFCA, that should be the actual party involved in this
16 proceeding.

17 EFCA claims it is unable to answer who owns EFCA because the ownership does
18 not translate into percentages. Response at 3:17-18. Even if this is true, EFCA is not
19 excused from answering the data requests. If percentages are not an appropriate way to
20 answer this data request, APS then requests that EFCA provide any operating agreement,
21 or any other agreement, that describes how EFCA is owned by its members. Once again,
22 APS is simply seeking to understand the nature of EFCA and what its interests are.

23 F. 1.5(A-C)

- 24 i. Original Request: "(a) How many employees does EFCA
25 have?; (b) How many of those employees are also employees

26 ⁵ Zep Solar admits on its homepage it is "a wholly-owned subsidiary of SolarCity." See
<http://www.zepsolar.com/> (last accessed on December 22, 2016) (attached as Exhibit 3 at 5).

27 ⁶ Press Release, SolarCity, SolarCity to Acquire Silevo (June 17, 2014),
28 <http://www.solarcity.com/newsroom/press/solarcity-acquire-silevo> (attached as Exhibit 4).

1 of one or more EFCA members? If any, which member or
2 members?; (c) For those EFCA employees that are also
3 employees of an EFCA member, fully describe in detail how
4 costs are allocated between members for those employees.”

5 EFCA attempts to hide behind the First Amendment to avoid answering simple
6 issues: how many people work for EFCA; how many work for both EFCA and its
7 members; and, who pays those who work for both what portion of their salary. EFCA is
8 simply wrong in claiming that this Data Request would “force disclosure of the identities
9 and compensation of its Member’s employees.” Response at 5:16-17. To the contrary,
10 this Data Request asks only how many employees EFCA has, how many of its employees
11 are also employees of an EFCA member, and how compensation of joint employees is
12 allocated. If, for example, all of EFCA’s employees are also employees of SolarCity, and
13 are paid in whole or in substantial part by SolarCity, these facts would be directly relevant
14 to EFCA’s bias and SolarCity’s role.

15 EFCA’s citation to several First Amendment decisions is mistaken. None of the
16 cases directly apply to the scenario here.⁷ Even if the 9th Circuit protections identified in
17 *Perry* could apply, EFCA has not satisfied the requirements for the qualified First
18 Amendment privilege. The first step of the *Perry* analysis requires the party asserting the
19 privilege make a prima facie showing “demonstrat[ing] that enforcement of the [discovery
20 request] will result in (1) harassment, membership withdrawal, or discouragement of new
21 members, or (2) other consequences which objectively suggest an impact on, or ‘chilling’
22 of, the members’ associational rights.”⁸ *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160–

23 ⁷ *NAACP v. Alabama*, 357 U.S. 449 (1958) (see Motion to Compel at 7); *Perry v.*
24 *Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010) (discussing discovery of a political campaign’s
25 internal communications concerning strategy and messaging); *In re Motor Fuel Temperature*
26 *Sales Practices Litigation*, 707 F. Supp. 2d 1145, 1152 (D. Kansas 2010) (applying 10th Circuit
27 First Amendment privilege law to find that disclosure is still appropriate); *Int’l Union v. Nat’l*
28 *Right to Work Legal Defense and Ed. Found., Inc.*, 590 F.2d 1139 (D.C. Cir. 1978) (identifying
that First Amendment protection for a legal aid organization when analyzing discovery related to
a labor statute); *Wyoming v. US Dep’t of Ag.*, 208 F.R.D. 449 (2002) (discussing state of
Wyoming’s discovery requests on non-parties).

⁸ Even if EFCA makes such a showing, disclosure would still be appropriate. “More specifically,
the second step of the analysis is meant to make discovery that impacts First Amendment

61 (9th Cir. 2010) (internal citations omitted). Here, EFCA has not even attempted to make a showing, and EFCA should be ordered to respond.

G. 1.6

- i. Original Request: “Provide all communications and documents exchanged between EFCA and SolarCity regarding APS’s rate case.”

EFCA’s Response with regards to Data Request 1.6 misstates the record, the facts, and the law.

To begin with, EFCA claims: “Actually, EFCA asserted work product, confidentiality, AND relevance objections.” Response at 6:18-19. This is untrue. Here is EFCA’s original objection:

EFCA objects to this discovery request in that any responsive documents would be confidential communications between EFCA and its Members. The communications requested among the Members of EFCA, including SolarCity would constitute confidential, litigation work product and is [sic] thus not relevant evidence or reasonably calculated to lead to the discovery of admissible evidence. EFCA’s Supplemental Response, November 29, 2016 at 10.

And in the follow up meet and confer, EFCA offered no other objection.

EFCA expressly argued, as APS noted in the Motion to Compel, that “confidential” or “work product” makes a communication irrelevant. Motion to Compel at 11:17-18. It appears to APS that EFCA is using its Response as an opportunity to revise its initial objections. This belief is supported by EFCA’s new arguments that the communications and documents are protected by the First Amendment,⁹ or Common-Interest Doctrine.

associational rights available only after careful consideration of the need for such discovery, *but not necessarily to preclude it.*” *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160–61 (9th Cir. 2010) (internal citations omitted) (emphasis added).

⁹ To the extent it is necessary to reply to a new objection, EFCA’s grapeshot references to various United Supreme Court decisions are incorrect and misleading. None of the newly referenced cases present an example of a civil litigant successfully resisting a discovery request from another private party. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, (1982) (discussing First Amendment protections implicated by organized boycott); *Larson v. Valente*, 456 U.S. 228 (1982) (determining that registration and reporting requirement violated the Establishment Clause); *Gilmore v. City of Montgomery*, 417 U.S. 556, 575 (1974) (determining “whether the city of Montgomery engaged in discriminatory activity violative of the parks desegregation order.”); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (striking down Connecticut law forbidding the use of contraceptives); *NAACP v. Button*, 371 U.S. 415 (1963) (determining that the First and Fourteenth Amendments protect the NAACP’s legal aid efforts from Virginia’s

1 Response at 7:14-8:21. Neither of these new objections were in EFCA's original
2 Objection. Nor did EFCA raise them during APS's meet and confer. It is only after
3 reading APS's Motion to Compel that EFCA has raised them. EFCA's position on this
4 issue is a moving target and its objections should be considered waived for the same
5 reason parties are deemed to have waived arguments in court. *See, e.g., Orfaly v. Tucson*
6 *Symphony Society*, 209 Ariz. 260, 265, ¶ 15, 99 P.3d 1030, 1035 (App. 2004)
7 (determining that party waived issues and arguments by not adequately presenting them
8 below).

9 Even if they weren't waived, they are inapplicable. To the extent that EFCA's
10 argument that common interest doctrine applies, the relevant case EFCA cites places the
11 burden on EFCA to prove the doctrine's application on a document by document basis.
12 *See Ariz. Indep. Redistricting Comm'n v. Fields*, 206 Ariz. 130, 141-143, 75 P.3d 1088,
13 1099-1101 (App. 2003) ("The IRC next contends that the trial court erred by compelling
14 disclosure of documents protected by the attorney-client and/or work product privileges,
15 as extended through the 'common interest doctrine'. . . The IRC has failed to demonstrate
16 that any communications or work product exchanged between it and NDC furthered legal
17 interests of both parties. . . . Therefore the communications and documents exchanged
18 between the IRC and NDC are not protected by the attorney-client or work-product
19 privileges, as extended by the common interest doctrine.").¹⁰

20 As the *Fields* court explained, "the doctrine does not create a privilege, but is an

21 attempt to regulate its methods as "improper solicitation of legal business."); *NAACP v. Alabama*
22 *ex rel. Paterson*, 357 U.S. 449 (1958) (*see* Motion to Compel at 7); *Buckley v. Valeo*, 424 U.S. 1
23 (1976) (addressing constitutional challenges to the Federal Election Campaign Act of 1971);
24 *Kusper v. Pontikes*, 414 U.S. 51 (1973) (determining that Illinois statute prohibiting voting in the
25 primary of one party after voting in another party's primary within 23 months violated plaintiff's
26 First Amendment rights); *AFL-CIO v. FEC*, 333 F.3d 168, 175 (D.C. Cir. 2003) (holding that
27 Federal Election Commission Regulation requiring disclosure of investigatory file materials was
28 impermissible because it "fail[ed] to account for the substantial First Amendment interests
implicated in releasing political groups' strategic documents and other internal materials").

¹⁰ EFCA cited two additional, non-binding cases in its discussion of the common interest
doctrine. Neither *United States v. BDO Seidman, LLC*, 492 F.3d 806 (7th Cir. 2007) nor *SCM*
Corp. v. Xerox Corp. 70 F.R.D. 508 (D. Conn. 1976) alter EFCA's duty to show that the doctrine
would apply.

1 exception to the rule that communications between a person and a lawyer representing
2 another person are not privileged.” *Id.* at 142, 75 P.3d at 1100. Critically, the “exchanged
3 communications subject to the common interest doctrine must themselves be privileged as
4 well as related to the parties’ common interest, ‘which may be either legal, factual, or
5 strategic in character.” *Id.* Finally, the *Fields* court noted that “communications solely
6 among clients do not fall within the common interest doctrine.” *Id.* The burden is on
7 EFCA to show that the doctrine applies, and it must show that a privilege applies to the
8 communications in question. EFCA has not even attempted to do so, and its argument
9 should be disregarded.

10 Next, EFCA suggests that because EFCA can only act through its members, any
11 communication between it and its members is a principal-agent communication, and
12 protected by the work-product doctrine. Response at 6:22-7:9. First, the suggestion that
13 EFCA is the agent of its members is new information that is contradicted by all of
14 EFCA’s prior characterizations of its relationship with its members, including SolarCity.
15 At every opportunity, EFCA has gone out of its way to emphasize that it is a separate
16 entity from its members. With EFCA’s Response, EFCA for the first time reveals the true
17 nature of its relationship with SolarCity. If EFCA is in fact SolarCity’s agent, this fact
18 calls into question the propriety of SolarCity objecting as a third-party to APS’s subpoena,
19 and lends weight to the notion that SolarCity should be made a party to this proceeding.

20 Moreover, APS is not suggesting that a principal/agent communication can never
21 be work product. But at the same time, principal-agent communications are not always
22 work product. In fact, whether a communication is between a principal and agent is
23 irrelevant for determining the existence of work product. A privilege log is the appropriate
24 way for EFCA to raise this objection, not a blanket and unsupported claim.

25 EFCA’s unwillingness to prepare a privilege log is baseless. While EFCA
26 correctly describes what it must do—describe the nature of the material not produced in a
27 manner sufficient to enable the other party to contest the claim—it misrepresents what
28 EFCA actually provided. Response at 8:24-26. EFCA suggests that it provided this on

1 November 18, 2016. Response at 8:26-28. They did not. EFCA's entire response to this
2 request was included above. Nowhere did EFCA make any description at all of the
3 documents it claims are protected.

4 A privilege log is the appropriate way to do so. Typically, a privilege log indicates
5 on a document by document basis, when the document was created, the author, the
6 recipient(s), and sufficient detail to allow the party to contest the claimed privilege or
7 protection. APS does not claim that a privilege log of every minute communication
8 between EFCA and SolarCity about this proceeding is called for. But at a minimum, it
9 would be appropriate for EFCA to produce a privilege log detailing the nature of their
10 relationship in regards to this proceeding. In the end, APS would not need any of these
11 communications if SolarCity simply made itself subject to discovery as any other party. If
12 it did so, parties would have the opportunity to test SolarCity's claims, and not be
13 thwarted by the blanket objections that EFCA raises as SolarCity's agent.

14 H. 1.7

15 Based on additional representations provided by EFCA after the motion to compel
16 was filed, APS withdraws Data Request 1.7. However, APS expects that EFCA will
17 supplement its response if it creates any responsive studies or analysis.

18 **III. CONCLUSION**

19 EFCA's Response demonstrates its continued efforts to hide the most basic
20 information. For the above reasons, and for those detailed in the previous Motion to
21 Compel, APS asks the Presiding Officer to issue a procedural order requiring EFCA to
22 respond to APS Data Requests 1.1, 1.4(a-b), 1.5, and 1.6.

23 RESPECTFULLY SUBMITTED this 27 day of December 2016.

24 ARIZONA PUBLIC SERVICE COMPANY

25 By _____

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1 Original and 13 copies of the foregoing
2 filed this 27th day of December 2016, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 *I hereby certify that I have this day served a copy of the foregoing document on all*
8 *parties of record in this proceeding by regular or electronic mail to:*

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EXHIBIT 1

ARIZONA CORP COMMISSION
FILED

APR 31 2015

FILE NO. R-2086374-8

ARIZONA CORP. COMMISSION



05474573

**APPLICATION FOR REGISTRATION
OF FOREIGN LIMITED LIABILITY COMPANY**
Please read Instructions 10257

1. ENTITY TYPE - check only one to indicate the type of entity applying for registration:

☒ LIMITED LIABILITY COMPANY

☐ PROFESSIONAL LIMITED LIABILITY COMPANY

2. NAME IN STATE OR COUNTRY OF FORMATION (FOREIGN NAME) -- enter the exact, true name of the foreign LLC:

ENERGY FREEDOM COALITION OF AMERICA, LLC

3. NAME TO BE USED IN ARIZONA (ENTITY NAME) -- identify the name the foreign LLC will use in Arizona by checking 3.1 or 3.2 (check only one), and follow instructions:

3.1 ☒ Name in state or country of formation, with no changes or additions -- go to number 4 and continue.

3.2 ☐ Fictitious name -- check this if the foreign LLC's name in its state or country of formation is not available for use in Arizona or if that name does not contain an LLC identifier, and enter the name in number 3.3 below. NOTE -- a resolution of the company adopting the fictitious name must be attached to and submitted with this form.

3.3 If you checked 3.2, enter or print the name to be used in Arizona:

4. PROFESSIONAL LIMITED LIABILITY COMPANY SERVICES -- if professional LLC is checked in number 1 above, describe the professional services that the professional LLC will provide (example: law firm, accounting, medical):

5. FOREIGN DOMICILE -- list the state or country in which the foreign LLC was formed:

Delaware

6. DATE OF FORMATION IN FOREIGN DOMICILE: 09/13/2015

7. PURPOSE OR GENERAL CHARACTER OF BUSINESS -- describe or state the purpose of the foreign LLC or the general character of the business it proposes to transact in Arizona:
Seeks to promote public awareness of the benefits of solar and alternative energy through public advocacy.

10257
Rev. 3/14

ARIZONA - VICTOR/Valerie Brown/Debra

ARIZONA Corporation Commission - Corporation Division
ARIZONA 1 of 2

8. STATUTORY AGENT IN ARIZONA:	
8.1 REQUIRED - give the name (can be an individual or company) and physical or street address (not a P.O. Box) in Arizona of the statutory agent:	8.2 OPTIONAL - mailing address in Arizona of statutory agent, if different from street address (can be a P.O. Box):
CT Corporation System Statutory Agent Name (print):	
Address (print): 5800 North Central Avenue, Suite 440	Address (print):
Address 2 (print):	Address 2 (print):
City: Phoenix State: AZ Zip: 85012	City: State: Zip:
8.3 REQUIRED - the Statutory Agent Acceptance form M002 must be submitted along with this Application For Registration.	

- 9. PRINCIPAL OFFICE ADDRESS - FOREIGN DOMICILE STREET ADDRESS** - see *Instructions 1022* - give the physical or street address (not a P. O. Box) of the foreign LLC required to be maintained in its state of organization, or, if not so required, of the foreign LLC's statutory agent in its state or country of organization:

The Corporation Trust Company		
Corporation Trust Center		
Address 1: 1208 Orange Street		
Address 2 (print):		
City: Wilmington	State: DE	Zip: 19801
Country: UNITED STATES	State or Province:	Zip:

10. OPTIONAL - ARIZONA KNOWN PLACE OF BUSINESS ADDRESS:

- 10.1** Is the Arizona known place of business street address the same as the street address of the statutory agent? ☒ Yes - go to the next page and continue.
☐ No - complete number 10.2 and continue.
- 10.2** If you answered "no" to number 10.1, give the physical or street address (not a P.O. Box) of the known place of business of the LLC in Arizona:

Address (print):		
Address 1:		
Address 2 (print):		
City:	State or Province:	Zip:
Country:		

COMPLETE NUMBER 11 OR NUMBER 12 - NOT BOTH.

11. **MANAGER-MANAGED LLC** - see Instructions 1025/ - check this box ☐ If management of the LLC is vested in a manager or managers, and complete and attach the Manager Structure Attachment Form LD40. The filing will be rejected if it is submitted without the attachment.
12. **MEMBER-MANAGED LLC** - see Instructions 1025/ - check this box ☒ If management of the LLC is reserved to the members, and complete and attach the Member Structure Attachment Form LD41. The filing will be rejected if it is submitted without the attachment.
13. **SIGNATURE:** By checking the box marked "I accept" below, I acknowledge under penalty of perjury that this document together with any attachments is submitted in compliance with Arizona law.

☒ I ACCEPT

John M. Stenetz

 Signature

John Stenetz, Chairman

 Printed Name

4/11/2015

 Date

REQUIRED - check only one and fill in the corresponding blank if signing for an entity:

<input type="checkbox"/> I am the individual Manager of this manager-managed LLC or I am signing for an entity whose manager is me.	<input type="checkbox"/> I am a Member of this member-managed LLC or I am signing for an entity whose member is me.	<input checked="" type="checkbox"/> I am a duly authorized agent for this LLC.
---	---	--

Filing Fee: \$150.00 (regular processing) Expedited processing - add \$50.00 to filing fee. ALL FEE'S ARE NON-REFUNDABLE - SEE INSTRUCTIONS	Mail: Arizona Corporation Commission - Corporate Filings Section 1500 W. Washington St., Phoenix, Arizona 85007 Fax: 602-942-6199
---	---

Amounts shown that AZCC fees reflect may the reference provisions required by statute. You should seek proper legal counsel for those matters that only pertain to the individual needs of your business.
 All documents filed with the AZCC are subject to examination and possible refusal and are open for public inspection.
 If you have questions about filing the documents, please call 602-942-6090 or (toll-free Arizona only) 800-345-6123.

LD40.000
 Rev 07/14

Arizona Corporation Commission - Corporate Filings Section
 Page 4 of 6

AZCC - 045226 - 04/06/2015

MEMBER STRUCTURE ATTACHMENT

2. **ENTITY NAME** - give the exact name of the LLC (foreign LLCs - give name in domestic state or country):
ENERGY FREEDOM COALITION OF AMERICA, LLC
-
3. **A.C.C. FILE NUMBER** (if known):
Find the A.C.C. file number on the upper corner of the document or on our website at: <http://www.aacc.com/indicators/indicators.html>
-
4. **MEMBERS** - give the name and address of all Members. If more space is needed, use another form for Structure Attachment Page.

SolarCity Corporation Name 3083 Clearview Way Address 1 Address 2 (optional) San Mateo CA 94402 City State Zip Country UNITED STATES	Infinity, LLC Name 47780 Kato Road Address 1 Address 2 (optional) Fremont CA 94538 City State Zip Country UNITED STATES
Zip Solar, LLC Name 161 Mitchell Blvd Address 1 Address 2 (optional) San Rafael CA 94903 City State Zip Country UNITED STATES	On Solar, LLC Name 3063 S. Valley View Blvd, 2 Address 1 Address 2 (optional) Las Vegas NV 89103 City State Zip Country UNITED STATES
I San Solar Electric, LLC Name 2919 E. Highland Drive Address 1 Bufile 13 Address 2 (optional) Las Vegas NV 89109 City State Zip Country UNITED STATES	Ecological Energy Systems Name 508 Volkswagen Parkway Address 1 Address 2 (optional) Buford TN 37020 City State Zip Country UNITED STATES
W&O Energy, Inc. Name Address 1 211 Chromag Center Address 2 (optional) Princeton NJ 08540 City State Zip Country UNITED STATES	W&O Name Address 1 Address 2 (optional) City State Zip Country

LOWLINE
from \$29.95

Source: *U.S. Census Bureau, Bureau of Economic Analysis, National Income and Product Accounts*.

Arizonan Corporate Crime Reporter - August/September 2008
Page 4 of 4

Clear Form

Print Form

DO NOT WRITE ABOVE THIS LINE. RESERVE FOR ACCESS ONLY.

STATUTORY AGENT ACCEPTANCE*Please read Instructions #100221*

1. **ENTITY NAME** - give the exact name in Arizona of the corporation or LLC that has appointed the Statutory Agent (this must match exactly the name as listed on the document appointing the statutory agent, e.g., Articles of Organization or Article of Incorporation):

Energy Freedom Coalition of America, LLC

2. **STATUTORY AGENT NAME** - give the exact name of the Statutory Agent appointed by the entity listed in number 1 above (this will be either an individual or an entity). **NOTE** - the name must match exactly the statutory agent name as listed in the document that appoints the statutory agent (e.g., Articles of Incorporation or Articles of Organization), including any middle initial or suffix:

C.T. Corporation System

3. STATUTORY AGENT SIGNATURE

By the signature appearing below, the individual or entity named in number 2 above accepts the appointment as statutory agent for the entity named in number 1 above, and acknowledges that the appointment is effective until the appointing entity replaces the statutory agent or the statutory agent resigns, whichever occurs first.

The person signing below declares and certifies under penalty of perjury that the information contained within this document together with any attachments is true and correct, and is submitted in compliance with Arizona law.

Audra Arnold

Audra Arnold

04/21/2016

Signature

Printed Name

Date

REQUIRED - check only one:

- | | |
|--|--|
| <input type="checkbox"/> Individual as statutory agent: I am signing on behalf of myself as the individual (natural person) named as statutory agent. | <input checked="" type="checkbox"/> Entity as statutory agent: I am signing on behalf of the entity named as statutory agent, and I am authorized to act for that entity. |
|--|--|

Filing Fees: none (regular processing)
Expedited processing - not applicable.
All fees are non-refundable - see Instructions.

Mail: Arizona Corporation Commission - Corporate Filings Section
1300 W. Washington St., Phoenix, Arizona 85007
Fax: 602-542-4100

Please do not stamp this A.C.C. form unless only the minimum provisions required by statute. You should seek advice from counsel for those matters that may pertain to the individual needs of your business.
All documents filed with the Arizona Corporation Commission are public records and are open for public inspection.
If you have questions after reading the Instructions, please call 602-542-2006 or (toll-free Arizona only) 800-342-3306.

1002-202
Rev. 03/014

A0071 - 00048877 William Kover-Collins

Arizona Corporation Commission - Corporation Division
Page 1 of 1

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "ENERGY FREEDOM COALITION OF AMERICA, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE REVEAL, AS OF THE SEVENTH DAY OF APRIL, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



5805835 2300

SRI# 202162155015

You may verify this certificate online at corp.delaware.gov/active.html

Authentication: 202112919

Date: 04-07-16

EXHIBIT 2

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE)
APPLICATION OF ARIZONA)
PUBLIC SERVICE COMPANY FOR)
A HEARING TO DETERMINE THE)
FAIR VALUE OF THE UTILITY) DOCKET NO.
PROPERTY OF THE COMPANY FOR) E-01345A-16-0036
RATEMAKING PURPOSES, TO FIX)
A JUST AND REASONABLE RATE)
OF RETURN THEREON, TO)
APPROVE RATE SCHEDULES)
DESIGNED TO DEVELOP SUCH)
RETURN.)

IN THE MATTER OF FUEL AND)
PURCHASED POWER PROCUREMENT) DOCKET NO.
AUDITS FOR ARIZONA PUBLIC) E-01345A-16-0123
SERVICE COMPANY.)

DEPOSITION OF BARBARA LOCKWOOD

Scottsdale, Arizona

December 15, 2016

Prepared By:
Colette E. Ross, CR
Certified Reporter #50658

I N D E X

WITNESS	PAGE
BARBARA LOCKWOOD	
Examination by Mr. Rich	8
Examination by Mr. Bender	223

EXHIBITS MARKED

EXHIBITS	DESCRIPTION	PAGE
<u>Exhibit 1</u>	Notice of Deposition	13
<u>Exhibit 2</u>	Prefiled Direct Testimony of Barbara Lockwood	14
<u>Exhibit 3</u>	Excerpt of Pinnacle West 2015 10-K	112
<u>Exhibit 4</u>	Article by Ms. Lockwood	155
<u>Exhibit 5</u>	Article by Mr. Brandt	177
<u>Exhibit 6</u>	5/7/15 E-Mail from Ms. Lockwood to Mr. Tenney	217
<u>Exhibit 7</u>	Prefiled Direct Testimony of Leland R. Snook	253

DEPOSITION OF BARBARA LOCKWOOD

was taken on December 15, 2016, commencing at 9:00 a.m.,
at the law offices of ROSE LAW GROUP, P.C., 7144 East
Stetson Drive, Suite 300, Scottsdale, Arizona, before
Colette E. Ross, a Certified Reporter in the State of
Arizona.

* * *

APPEARANCES:

For the Arizona Public Service Company:

SNELL & WILMER, L.L.P.
By Ms. Patricia Lee Refo
One Arizona Center
400 East Van Buren, Suite 1900
Phoenix, Arizona 85004
602-382-6000
prefo@swlaw.com

and

PINNACLE WEST CAPITAL CORPORATION
Law Department
By Mr. Thomas Loquvam
400 North Fifth Street
Phoenix, Arizona 85004
602-250-1000
thomas.loquvam@pinnaclewest.com

For the Witness:

PERKINS COIE
By Mr. Jean-Jacques "J" Cabou
2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012
602-351-8003
jcabou@perkinscoie.com

Coash & Coash, Inc.

602-258-1440

www.coashandcoash.com

1 APPEARANCES:

2 For the Energy Freedom Coalition of America:

3 ROSE LAW GROUP, P.C.
4 By Messrs. Court S. Rich, Samuel Doncaster, and Eric
5 Hill
6 7144 East Stetson Drive, Suite 300
7 Scottsdale, Arizona 85251
8 480-505-3936
9 crich@roselawgroup.com

10 For Vote Solar:

11 Earthjustice
12 By Mr. David Bender
13 1625 Massachusetts Avenue NW, Suite 702
14 Washington D.C., 20036
15 202-667-4500
16 dbender@earthjustice.org

17 For Arizona Investment Council:

18 OSBORN MALEDON
19 By Ms. Meghan Grabel
20 2929 North Central Avenue, 21st Floor
21 Phoenix, Arizona 85012
22 602-640-9000
23 mgrabel@omlaw.com

24 For Freeport Minerals Corporation and Arizonans for
25 Electric Choice and Competition:

26 FENNEMORE CRAIG, P.C.
27 By Mr. Patrick Black
28 2394 East Camelback Road, Suite 600
29 Phoenix, Arizona 85016
30 602-916-5999
31 pblack@fclaw.com

1 APPEARANCES:

2 For Tucson Electric Power:

3 TUCSON ELECTRIC POWER COMPANY
4 By Mr. Bradley S. Carroll
5 88 East Broadway Boulevard
6 Tucson, Arizona 85701

7 and

8 SNELL & WILMER, L.L.P.
9 By Mr. Michael Patten
10 One Arizona Center
11 400 East Van Buren, Suite 1900
12 Phoenix, Arizona 85004
13 602-382-6000
14 mpatten@swlaw.com

15 For Arizona Solar Deployment Alliance:

16 LAW OFFICES OF GARRY D. HAYS, P.C.
17 By Mr. Garry D. Hays
18 2198 East Camelback Road, Suite 305
19 Phoenix, Arizona 85016
20 602-308-0579

21 For Calpine Solutions, Constellation Energy, and Direct
22 Energy:

23 LAWRENCE V. ROBERTSON, JR., ESQ.
24 210 Continental Road, Suite 216A
25 Green Valley, Arizona 85622
520-398-0411
tubaclawyer@aol.com

For IO Data Centers, L.L.C.:

IO DATA CENTERS, L.L.C.
By Ms. Brittany L. DeLorenzo, Corporate Counsel, via
teleconference
615 North 48th Street
Phoenix, Arizona 85008
602-231-8473
bdelorenzo@io.com

1 APPEARANCES:

2 For IBEW Locals 769 and 387:

3 LUBIN & ENOCH, P.C.
4 By Ms. Emily Tornabene
5 349 North Fourth Avenue
6 Phoenix, Arizona 85003
7 602-234-0008

8 For Federal Executive Agencies:

9 U.S. Air Force Utility Law Field Support Center
10 By Mr. Andrew Unsicker, via teleconference
11 Tyndall Air Force Base, Florida 32403
12 andrew.unsicker@us.af.mil

13 For the Residential Utility Consumer Office:

14 RUCO
15 By Mr. Jordy Fuentes
16 1110 West Washington Street, Suite 220
17 Phoenix, Arizona 85007
18 602-364-4835

19 For the Arizona Corporation Commission Staff:

20 By Mr. Wesley C. Van Cleve
21 1200 West Washington Street
22 Phoenix, Arizona 85007
23 602-542-3402

24 Also present:

25 Mr. Jon Wellinghoff, EFCA, and regulatory
counsel for SolarCity
Mr. Frank DiModica, APS
Ms. Briana Kobor, Vote Solar, via teleconference

1 (Exhibit 1 and Exhibit 2 were marked for
2 identification.)

3 (Whereupon Barbara Lockwood was duly sworn by
4 the Certified Reporter.)

09:00:49 5 MR. RICH: Let's go around and take
6 appearances, I suppose, first. I will go first.

7 Court Rich from the Rose Law Group on behalf of
8 EFCA.

9 MR. WELLINGHOFF: Jon Wellinghoff with EFCA and
09:00:59 10 regulatory counsel for SolarCity.

11 MR. DONCASTER: Samuel Doncaster, Rose Law
12 Group, for EFCA.

13 MR. BENDER: David Bender, Earthjustice, for
14 Vote Solar.

09:01:07 15 MR. ROBERTSON: Larry Robertson for now Calpine
16 Solutions, used to be Noble Solutions, Constellation
17 Energy, and Direct Energy.

18 MR. BLACK: Patrick Black of the law firm
19 Fennemore Craig on behalf of AECC and Freeport Minerals
09:01:25 20 Corporation.

21 MR. FUENTES: Jordy Fuentes on behalf of RUCO.

22 MR. VAN CLEVE: Wes Van Cleve on behalf of the
23 Utilities Division.

24 MS. GRABEL: Meghan Grabel from the law firm
09:01:34 25 Osborn Maledon on behalf of Arizona Investment Council.

EXHIBIT 3



Ground Zep

Provides a point of connection between the PV array and grounding conductor.



IT STARTED WITH A SIMPLE IDEA...

INNOVATION & OPTIMIZATION



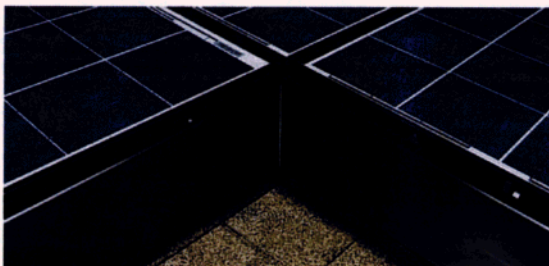
In 2009, we began assembling a team of PV industry veterans, visionary product engineers, and Silicon Valley investors - all focused on the goal of developing and commercializing a whole new approach to PV structure.

Our goal was to advance the proliferation of solar energy through cleverly designed products whose features would optimize material use, labor resources, safety, and aesthetic appeal.

NEXT-LEVEL

PV MOUNTING TECHNOLOGY

THAT REVOLUTIONIZED AN ENTIRE
INDUSTRY



What we created was the PV industry's first comprehensive installation platform. At the core of the platform is the Zep Groove -- a specialized groove, designed into the frame of a PV module, that interoperates with our mounting hardware in surprising and effective ways. The result is a suite of

mounting systems that drastically reduce the cost of installation and significantly improve safety and aesthetics.

RESIDENTIAL SYSTEMS



(/datasheets)

With over 800 MW of residential PV systems installed in the U.S., Zep Solar is the clear leader in PV mounting technology, offering homeowners the benefits of rapid installation and aesthetic qualities that stand out amongst the competition.

**VIEW PRODUCT DATASHEETS
(/DATASHEETS)**

COMMERCIAL SYSTEMS



(/datasheets)

We've taken the basics of our core technology and applied them to commercial applications in order to create breakthrough commercial mounting systems for flat roofs and carports.

**VIEW PRODUCT DATASHEETS
(/DATASHEETS)**

US HEADQUARTERS/
R&D FACILITY

Zep Solar, LLC
(a wholly-owned subsidiary
of SolarCity)
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p: +1 (415) 479-6900

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Zep Solar Trading
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SOLARCITY
HEADQUARTERS

3055 Clearview Way
San Mateo, CA 94402
p: (650) 638-1028
www: solarcity.com
(http://www.solarcity.com)

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| [Patents \(/patents\)](/patents)

ZEP SOLAR, 161 MITCHELL BLVD, SAN RAFAEL, CA, 94903, UNITED
STATES 415-479-6900 INFO@ZEPSOLAR.COM ([MAILTO:INFO@ZEPSOLAR.COM](mailto:INFO@ZEPSOLAR.COM))

EXHIBIT 4



Press releases

Media Contact:

Molly Canales | (650) 963-5674 | [press\[at\]solarcity.com](mailto:press[at]solarcity.com)

SolarCity to Acquire Silevo

SolarCity has signed a definitive agreement to acquire Silevo, a solar technology and manufacturing company whose modules have achieved a unique combination of high energy output and low cost.

Jun 17, 2014

SAN MATEO, Calif. — SolarCity Corporation (NASDAQ: SCTY), has signed a definitive agreement to acquire Silevo, a solar technology and manufacturing company whose modules have achieved a unique combination of high energy output and low cost. The transaction was announced, and its significance described in detail, in a post from SolarCity Chairman Elon Musk, Co-founder and Chief Technology Officer Peter Rive and Co-founder and Chief Executive Officer Lyndon Rive on SolarCity's blog, available at: <http://blog.solarcity.com/silevo/>. Mr. Musk and Messrs. Rive will host a conference call to discuss the proposed acquisition today, Tuesday, June 17, 2014, at 10:00 a.m. Eastern Time. For additional details regarding the proposed acquisition, please review our current report on Form 8-K filed today with the Securities and Exchange Commission.

The conference call can be accessed live over the phone by dialing 1-877-407-0784, or for international callers, 1-201-689-8560. A replay will be available two hours after the call and can be accessed by dialing 1-877-870-5176, or for international callers, 1-858-384-5517. The passcode for the live call and the replay is 13585224. The replay will be available until June 24, 2014.

Interested investors and other parties may also listen to a simultaneous webcast of the conference call by logging on at the "Events and Presentations" link of the Investor Relations section of the Company's website at <http://investors.solarcity.com/events.cfm>. The on-line replay will be available for a limited time beginning immediately following the call.

Investor Contact

Aaron Chew

650-963-5920

investors@solarcity.com**About SolarCity**

SolarCity® (NASDAQ: SCTY) provides clean energy. The company has disrupted the century-old energy industry by providing renewable electricity directly to homeowners, businesses and government organizations for less than they spend on utility bills. SolarCity gives customers control of their energy costs to protect them from rising rates. The company makes solar energy easy by taking care of everything from design and permitting to monitoring and maintenance. Visit the company online at www.solarcity.com and follow the company on [Facebook](#) & [Twitter](#).

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COMPANY

BUSINESS & GOV.

CAREERS

UTILITIES

LOCATIONS

BLOG

FAQS

NEWS

CONTACT

SOLAR BONDS

LOG IN



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TERMS OF USE · PRIVACY POLICY · SITEMAP

A solar power system is customized for your home, so pricing and savings vary based on location, system size, government rebates and local utility rates. Savings on your total electricity costs is not guaranteed. Financing terms vary by location and are not available in all areas. \$0 due upon contract signing. No security deposit required. A 3 kW system starts at \$25-\$100 per month with an annual increase of 0-2.9% each year for 10-20 years, on approved credit. CA CSLB 888104, MA HIC 168572/EL-1136MR, other contractor licenses. SolarCity is not the lender and only the third party lender may approve, offer, or make a loan.

Savings based on SolarPPA and SolarLease customers with at least twelve months of billing data. Savings Rate calculated by subtracting PPA or equivalent lease kWh rate from relevant utility kWh rate. Savings calculated by multiplying actual kWh supplied by SolarCity in customers' first year times Savings Rate. Excludes fully or partially prepaid contracts.

Solar Bonds are debt securities issued by SolarCity. As with any investment, purchasing Solar Bonds involves risk. You must make your own decision about whether and how much to invest in Solar Bonds. SolarCity cannot make any investment recommendations or otherwise provide any investment advice. SolarCity has filed a registration statement (including a prospectus) with the Securities and Exchange Commission ("SEC") for offerings to which information on this web site relates. Before you invest, you should read the prospectus in that registration statement and other documents SolarCity has filed with the SEC for more complete information about SolarCity and the offerings. You may get these documents for free by visiting EDGAR on the SEC web site at www.sec.gov. Alternatively, you may obtain the prospectus relating to the Solar Bonds, and the pricing supplement relating to a particular series of Solar Bonds, at solarbonds.solarcity.com.

*Based on SolarCity average system size of 6 kW and 8,418 kWh average first year production degraded by .5% annually over 30 years. Environmental benefits based on data collected from: Environmental Protection Agency, US Geological Survey, Global ReLeaf, and National Geographic April 2014.